Appendix D
State Proxy Ceilings for the Local Loop

State	Proxy Ceiling	State	Proxy Ceiling
Alabama	$17.25	Montana	$25.18
Arizona	$12.85	Nebraska	$18.05
Arkansas	$21.18	Nevada	$18.95
California	$11.10	New Hampshire	$16.00
Colorado	$14.97	New Jersey	$12.47
Connecticut	$13.23	New Mexico	$18.66
Delaware	$13.24	New York	$11.75
District of Columbia	$10.81	North Carolina	$16.71
Florida	$13.68	North Dakota	$25.36
Georgia	$16.09	Ohio	$15.73
Hawaii	$15.27	Oklahoma	$17.63
Idaho	$20.16	Oregon	$15.44
Illinois	$13.12	Pennsylvania	$12.30
Indiana	$13.29	Puerto Rico	$12.47
Iowa	$15.94	Rhode Island	$11.48
Kansas	$19.85	South Carolina	$17.07
Kentucky	$16.70	South Dakota	$25.33
Louisiana	$16.98	Tennessee	$17.41
Maine	$18.69	Texas	$15.49
Maryland	$13.36	Utah	$15.12
Massachusetts	$9.83	Vermont	$20.13
Michigan	$15.27	Virginia	$14.13
Minnesota	$14.81	Washington	$13.37
Mississippi	$21.97	West Virginia	$19.25
Missouri	$18.32	Wisconsin	$15.94
		Wyoming	$25.11

August 8, 1996

In the Matter of
Implementation of the Local Competition Provisions in
the Telecommunications Act of 1996 (CC Docket No. 96-98)
and
Interconnection between Local Exchange Carriers and
Commercial Mobile Radio Service Providers (CC Docket No. 95-185)

Separate Statement of Chairman Reed E. Hundt

This order is the most pro-competitive action of government since the break-up of the Standard Oil Trust. I hope the whole country will join in common acknowledgement of all those who made this possible.

The private sector was ably represented, and provided us with much useful information and suggestions.

I specifically acknowledge and thank my colleagues, Commissioners Quello, Ness and Chong, and their staffs, all of whom contributed greatly throughout this process.

I would also especially thank Cheryl Parrino, President of the National Association of Regulatory Utility Commissioners. Her advice and counsel have been invaluable. Thanks also go to the two individuals who served as Chair of NARUC's Communications Committee during this period, Ken McClure and Lisa Rosenblum. I also thank the many other state commissioners from around the country who took time to discuss these matters with us, and who sent their staffs here for extended meetings on all these issues. I would also especially thank Chairman Dan Miller of the Illinois Commerce Committee who detailed one of his staff members, Augie Ros, to the FCC.

I owe a special debt of gratitude and respect to John Nakahata, my Senior Legal Adviser. John's brilliant, indefatigable, incisive and comprehensive work was essential to the triumph of analysis and policy that is in this order.

The highest commendations, however, go to the FCC staff, superbly led by Regina Keeney and Richard Metzger. I would like specifically to recognize each of the dedicated members of the Commission's staff who contributed to this effort, and I apologize if I have inadvertently omitted anyone:

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STATEMENT OF
COMMISSIONER JAMES H. QUELLO

August 8, 1996

Re: Interconnection Report and Order

Today marks the end of the pre-competitive era in local telephone service. By our vote today the Commission implements rules that will introduce competition into this last monopoly telecommunications market.

Our Report and Order refers to these rules as the first part of a trilogy that also includes future universal service and access charge reform. This is, to be sure, true. But I must confess that I also see today's action as not the first, but rather the third and final part, of a different trilogy -- one whose first two parts were the introduction of competition into the long-distance telephone market and the divestiture of the Bell Operating Companies from AT&T. These first two events made local telephone competition inevitable; today we usher it in.

Any Commissioner would be privileged to have served during one of these events. I have been lucky enough to have seen all three. From this perspective, then, I would offer several thoughts to the parties most immediately affected by today's decision.

First, to the public, I would say: unparalleled changes in the array of telecommunications services available to you, as well as in the companies that provide them, are going to occur. As competition proliferates and prices fall, economic growth will also occur, and that too will benefit all of us. This is the vision of the 1996 Act, and it is the goal of the rules we adopt today.

To those companies that seek to offer competitive local telephone service, I would say: the rules we adopt today attempt to provide the regulatory assistance you need to enter a market in which your competitor not only possesses a monopoly, but also controls the facilities upon which you must depend to compete. But even so, our rules are pro-competition, not pro-competitor. They are intended to make it possible for you to enter the market on fair and equitable terms, but not to so alter the market that entry occurs even where it otherwise might not. We have opened the door, but we have not paved the way.

To the wireless communications providers, I would say: we have heard and understand your concerns regarding the differences in your technical and market configurations and have, therefore, expressly reserved federal jurisdiction under Section 332. Nevertheless, it is important that our decisions implementing competition be technology-neutral and provide an opportunity for negotiations under the comprehensive interconnection regime embodied by Congress in Section 251. We will presume good faith negotiations by all but stand ever vigilant to consider and resolve instances of discriminatory treatment.

To our state commission counterparts, I would say: with today's action, we effectively pass you the pen. It is now your responsibility to write the rules and set the prices and terms that will make Congress's vision of competition a reality. To provide added flexibility and to make this process administratively easier, we have also provided ranges of proxy prices that can be used until, or even instead of, state-specific rates are set. Our decision today borrows from and builds on the experience of those of you who are grappling with statewide competition issues. This has, in sum, been a collaborative process. It must continue to be a collaborative process if we are collectively to succeed.

To small telephone companies, I would say: our Report and Order relies largely on state commissions to implement the provisions of the law that ensure that competition will be introduced in a way that is sensitive to your unique circumstances. We cannot, and indeed would not want to, perpetuate what one small company has called a "reasonable, investment-backed expectation to hold competitive advantages over new market entrants." But while we will not guarantee your current profit margins, we are also confident that state decisions will assure that competition in your service areas will take hold in a reasonable manner.

To the Bell Operating Companies and other large independent local telcos, I would say: these rules will bring about competition. You will open your markets to competitors, and in return you will become competitors in other markets. The rules we adopt today will enable you to do both things. What they will not enable you to do is avoid the first, but obtain the second. These rules will bring change, not catastrophe; they will bring opportunity, not oblivion. It will be a different world, but one in which you will continue to play a vital role.

Finally, I must acknowledge that this day would not have come without the tireless dedication and tremendous talents of Gina Keeney and her gifted Common Carrier Bureau staff. The Chairman will, I am sure, commend each of you at length, and I will leave that privilege to him. For my part I want to express my thanks to the entire CCB "Dream Team," and especially to its captain, Richard Metzger. This job could literally not have been done this well in such short time without you, and for that you have my profound respect and appreciation.

August 8, 1996

SEPARATE STATEMENT
OF
COMMISSIONER SUSAN NESS

Re: *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*

Today we are fulfilling one of the most important responsibilities assigned to us by the Telecommunications Act of 1996 -- writing the rules that will achieve Congress's vision of fair and robust competition in all telecommunications markets. We are doing so with utmost fidelity to the letter and the spirit of the statute.

At the heart of the legislation is a bold commitment to supplant monopoly with competition. Based on the abundant benefits that have flowed to consumers as a result of competition in the provision of long distance services, information services, and customer-premises equipment, Congress decreed that the opportunity for competition be extended to the local telephone market. It ordered that barriers to entry be swept aside -- and that pathways to competitive entry be opened.

Sections 251 and 252 of the 1996 Act establish the foundation for this competition. On this foundation must be built radically different relationships than those that have previously existed -- between incumbent local exchange carriers and new entrants, between state and federal regulators, and between regulators and industry.

Congress recognizes that, to effectuate a new policy of local competition for markets that have traditionally been protected monopolies, a national policy framework is essential. But it also recognizes the need for flexibility. This balance is reflected in the 1996 Act, which sets forth the key principles in the statute, instructs this Commission to formulate implementing regulations, and assigns many of the duties pertaining to specific carriers and agreements to the state commissions.

At the same time, Congress encouraged voluntary negotiations between incumbent local exchange carriers and new entrants. Although voluntary agreements are not subject to Section 251 and our implementing regulations, we are aware that the negotiations may be influenced by the legislative and regulatory regime for arbitrated agreements. The "backdrop" of our rules should encourage, not impede, the successful negotiation of voluntary agreements.

The 1996 Act intends that the benefits of competition be available in all 50 states, not some lesser number. Congress recognized that some states were already making progress in the introduction of local competition, and it sought to permit that progress to continue.

Consistent with the statute, the rules we promulgate today will enable those states in the vanguard to continue on their pro-competitive course. Other states are being given the tools necessary to accelerate their progress. All states will have considerable responsibility for effectuating the transition to competition within their own borders.

Our decisions in this proceeding are the product of extensive discussions with state regulators concerning a wide variety of legal, economic, policy, and practical issues. The insights that have been shared with us by state regulators have guided us throughout our deliberations. Maintaining a successful partnership between state and federal regulators will be essential to fulfill the legislative expectations underlying the new structure set out in Sections 251 and 252 of the 1996 Act.

Our duty is to establish rules that are pro-competition, not pro-competitor. Competitive access providers, cable companies, interexchange carriers, wireless companies, and others will all bring unique skills and strategies to the new competitive arena. Today's ruling, and the decisions that will follow from the state commissions, will enable all of these entities to compete robustly, and without hindrance based on other entities' entrenched market power.

In today's order, we are also facilitating new entry by identifying a core set of unbundled network elements that new entrants may obtain, singly or in combination, from incumbent LECs, to create new and innovative services. We send correct economic signals to potential entrants by requiring the use of forward-looking pricing principles. We promote voluntary negotiations by establishing minimal rules regarding the duty to bargain in good faith. We are providing immediate relief from CMRS-LEC interconnection agreements that violate fair play and flout our existing rules. In these and other respects, we act forcefully to bring to the local telephone market the dramatic change Congress intended.

Yet we also maintain fair treatment to the incumbent local exchange carriers. They are entitled to fair prices for the services and elements they offer, and our pricing principles accordingly reject costing methods that ignore the LECs' current network architecture or deny recovery of reasonable joint and common costs. The special needs of smaller incumbents, especially rural telcos, must be addressed with extra care, and just as Congress intended, we safeguard them today.

Some have expressed concern about the effect on universal service of flash-cut changes in market rules and pricing principles. We have listened -- and responded. With an abundance of caution, we have established an access charge transition of limited duration that will reduce the exposure of incumbent local exchange carriers to the sudden loss of access charge revenues. But we have also established for the long-term the principle that prices for network elements, transport and termination, and collocation must be based on costs -- not hidden subsidies that distort market forces.

We have committed to expeditious completion of the universal service proceeding, where we must make subsidies explicit and both eligibility and funding must become competitively neutral. On a parallel track, we must complete reform of access charges, to eliminate uneconomic incentives that distort investment decisions. A rational economic structure for all services and elements is vital to sustainable competition.

Only when the universal service, access reform, and interconnection rules are all in effect will local telephone subscribers really begin to see the full benefits of marketplace competition: lower prices, new services, and more choices. As market power wanes, the role of government will diminish as well.

Competition will take time to emerge. Expectations are high, but the reality will inevitably lag behind. As the process unfolds over the coming months and years, there are bound to be unforeseen circumstances, unintended consequences, and efforts to game the process. We will remain vigilant, and will reevaluate and refine our rules as necessary to promote competition that is both robust and fair.

Following the mandate of the Telecommunications Act of 1996, this Commission will not shrink from taking the steps necessary to enable the benefits of competition to reach consumers throughout the nation.

August 8, 1996

Separate Statement of

Commissioner Rachelle B. Chong

Re: *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185; Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252.*

The passage of the Telecommunications Act of 1996[1] marked the end of more than sixty years of monopoly style regulation. The changes wrought by the 1996 Act on the telephone industry are dramatic and comprehensive. I write separately to emphasize my strong belief that the pro-competitive path we have unanimously chosen in this interconnection order is the right one.

On the day the 1996 Act became law, the Commission embarked on a challenging journey to help implement the new statute. Our final destination has been clearly delineated by Congress. We are "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[2]

True to this charge, we have resolved to act quickly and decisively to open all telecommunications markets to competition, to provide pricing methodologies that will drive rates toward cost, and to provide a national policy framework that will achieve this restructuring of the industry in an orderly and efficient manner. The rules in this item do not favor any particular industry or player over another, but instead free them from outdated regulatory restraints in order to compete with each other.

The 1996 Act opens up the local telephone network to competitors, and provides them with unprecedented access through an interconnection framework.[3] The Act

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1 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 *to be codified at* 47 U.S.C. §§ 151 *et. seq.* (1996 Act).

2 S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

3 Interconnection refers to the physical linking of two networks for the mutual exchange of traffic.

provides three methods of entry through which a competitor may enter the local telephone market: (1) full facilities-based entry; (2) purchase of unbundled elements from the incumbent local exchange carrier (LEC), i.e. network "piece parts;" and (3) resale, which gives a competitor the ability to purchase an incumbent LEC's retail service at a wholesale price and repackage it for sale to the competitor's own end user.

Facilities-based Competition. The first entry option – facilities-based competition – represents the most dramatic departure from our current bottleneck monopoly structure. A full facilities-based competitor would offer a myriad of distinct services through separate facilities to its subscribers, and thus providing consumers with the benefits of head-to-head competition. As a practical matter, however, we do not expect a market typified by full-fledged facilities-based competition to blossom overnight. These networks or systems must be planned, financed and constructed over time. As a result, the other two entry avenues – the purchase of unbundled elements and resale – take on a special importance in the near term to bring swift competition to the local marketplace.

Unbundled Elements. Some new entrants already have some network infrastructure in place, and lack only a few critical components in order to provide local exchange service to consumers. For example, today's cable operators have a coaxial wire that passes over 96.6% of the TV households in America.[4] If a cable operator can access the remaining necessary network elements from the incumbent LEC, the cable operator would be only a step away from providing local telephone service over its upgraded network. This example points out why it is essential for new entrants to obtain access to those network piece parts. In our order, we set forth a minimum list of unbundled network elements that incumbent LECs uniformly must make available to new entrants upon request. The state commissions may expand upon this list. We believe that this action will give new entrants what they need so competition is "jump started."

Resale. Resale is another critically important entry strategy because three types of new entrants stand to benefit. First, facilities-based competitors that want to immediately enter the market prior to completing their own networks can use resale as a transition mechanism. Second, facilities-based competitors whose existing infrastructure does not overlap the incumbent LEC's service area, may choose to use resale to ensure that it can offer a competing local service package within the same service territory as the incumbent LEC. Third, new entrants who do not intend to offer facilities-based competition will be able to compete immediately in the local market by purchasing discounted services of the incumbent LEC. For all of these categories, our decision provides a viable avenue for immediate market entry.

Free Market Negotiations. I highlight that the 1996 Act has made the mechanism for entry a *free market* negotiation process between the incumbent LEC and any potential new

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[4] Paul Kagan Associates, Inc., *Marketing New Media,* Mar. 18, 1996.

competitor. Under Section 252(a)(1), the Commission's Section 251 rules play no role if an incumbent LEC and a new entrant reach a purely voluntary agreement, and the state commission approves it through the process set forth in Section 252.

Need for Minimum National Baselines. It is only if the carriers are unsuccessful in their voluntary negotiations that government steps in. The Act provides that the state commissions arbitrate the disputes. In today's order, we set forth a baseline of terms and conditions for an arbitrated interconnection agreement. I support this action for three reasons. First, because interconnection matters are very complex and technical, I believe that minimum national guidelines will help parties lower their transaction costs and will help drive them to reach their voluntary agreements much faster. At the outset of their voluntary negotiations, parties will understand what their minimum rights will be in a subsequent state commission arbitration process; it is our hope this may encourage earlier agreement.

Second, a baseline of terms and conditions simplifies the state commission arbitration process. A baseline enables a state commission to quickly approve an agreement and thus rapidly introduce competition. The presence of a baseline minimizes any regulatory delay that might result if a state commission were to establish from scratch its own pricing methodology or conduct a proceeding to identify network elements that must be unbundled.

Third, in establishing some national minimum baselines, we greatly aid new entrants who have national or regional strategies. Without such baselines, these competitors would face a "patchwork quilt" of differing state regulatory requirements that may create a potential entry barrier by increasing their entry costs and causing substantial delay. Thus, it is my view that these baselines promote swift competitive entry, which in turn will lead to the earlier introduction of competitive services to consumers.

Access Charge Transition. Although we take a great leap forward toward competition with this interconnection order, our goal in making local telephone competition a reality will not be complete until we finish universal service reform and restructure our current access charge regime. Our order notes that the Act sets forth a specific time frame by which the Commission must issue final rules as to interconnection (August 1996) and universal service reform (May 1997). Because of the time differential between these dates, and in order to avoid undue disruption of the incumbent LECs' ability to support universal service, I have supported our decision to require new entrants when purchasing unbundled elements to pay a portion of certain access charges until no later than June 30, 1997. My support for the establishment of a short term access charge transition scheme is premised on the Commission's firm commitment to complete universal service and access charge reform by the first half of 1997. I underscore my determination that the interim access charge mechanism proposed herein is of a finite duration. I can foresee no circumstance upon which it would be extended beyond the dates set forth in our order.

Pricing Methodology. Prices of interconnection and unbundled elements, along with prices for transport and termination and resale, are all crucial to any interconnection agreement. Again, should the parties voluntarily agree on such prices, these agreements will be submitted to the states for approval and there is no government intervention in the process.

If carriers cannot agree, however, today's decision makes clear that the FCC will *not* set these prices. The Act provides that the appropriate state commission will step in to set prices. To help guide state commissions as they set prices according to local conditions, we have established methodological pricing principles that are consistent with the Act's cost-based pricing provisions. We have asked the state commissions to use the cost-based pricing methodology described in our order when they conduct an economic cost study to set their state specific rates. A clear benefit of this approach is that such a national framework will encourage the swift establishment of a common, pro-competition understanding of pricing principles among the states.

We also have established certain default proxies that states will use in the interim, if they have not completed a cost study during an arbitration, or if they lack the necessary resources to initiate their own cost study. It is my view that these default proxies, which are either price ceilings or price ranges, will greatly speed competition. For example, in a situation where the state commission has not yet completed a cost study but must render a decision on specific pricing issues in an arbitration pursuant to the deadline imposed by Section 252(e)(4), the default proxies will assist the state commission in resolving the pricing issues quickly and in a way consistent with the Act's cost-based pricing principles.

I emphasize that a state commission has the flexibility to set a specific rate that is either above or below the default proxy ceiling or range if it has conducted its own cost study consistent with the pricing methodology set forth in our order. The default proxy is only an interim mechanism and it may not be relied upon once a state commission has completed its own economic cost study.[5]

CMRS-LEC Interconnection Issues. In our order, I have supported our decision to allow CMRS-LEC interconnection matters to be governed by the Sections 251/252 provisions, while continuing to acknowledge our continuing jurisdiction pursuant to Section 332 over CMRS-LEC interconnection matters. In doing so, we have declined to opine on the precise extent of our Section 332 jurisdiction over CMRS-LEC interconnection matters, however. I emphasize that by opting to use the Section 251/252 framework, we are not repealing our Section 332 jurisdiction by implication or rejecting

[5] It is unfortunate that we did not have enough of a record in this proceeding to decide what would be an appropriate proxy for paging carriers' termination costs or to set a default proxy. I am committed to moving forward with a further rulemaking proceeding on this issue as quickly as possible.

Section 332 as an alternative basis for jurisdiction.

While we have generally crafted our interconnection rules not to favor any particular industry, player or technology over another, we cannot shut our eyes to inherent differences between some classes of carriers' services that may pose potential problems when we seek to apply our new interconnection rules. I believe that should the need arise in the future, we should not hesitate to adapt some of our general interconnection rules to recognize the unique nature of particular classes of service providers, such as CMRS providers. It is for this reason that I supported the Commission's decision to reserve its right to exercise jurisdiction over LEC-CMRS interconnection under Section 332.

There are several differences that set wireless CMRS providers apart from some of the other telecommunications carriers that will avail themselves of the Sections 251 and 252 interconnection framework. First, when adopting Section 332 in 1993, Congress created a national regulatory framework for CMRS providers, and granted the FCC authority to preempt states from entry and rate regulation. Congress made clear that its intent was to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[6] This recognition that CMRS services are uniquely interstate in scope was apt. CMRS service areas, which are established federally, can encompass more than one state jurisdiction.[7] Congress was rightly concerned that imposing multiple state regulatory schemes on CMRS providers may prove unduly burdensome, cause delay, and otherwise inhibit the industry's growth. Notably, Congress did not repeal Section 332 when it provided new Sections 251 and 252 in the 1996 Act.

Second, CMRS providers have suffered past discrimination at the hand of the LECs and by certain state commissions with regard to interconnection matters. Today's record is replete with examples of LECs that have significantly overcharged CMRS providers for past interconnection. Further, in violation of our rules, our record reflects that in some cases,

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6 H.R. Report No. 103-11, 103rd Cong., 1st Sess. 260 (1993).

7 For example, Personal Communications Service (PCS) providers in the Washington - Baltimore Major Trading Area (MTA) are subject to six jurisdictions – Pennsylvania, Delaware, Maryland, Virginia, West Virginia and the District of Columbia – due to the large size and location of the federally set service areas. Should one of these PCS providers need to arbitrate an interconnection agreement pursuant to Section 251 and 252, such PCS provider could be subjected to as many as *six* state arbitration proceedings. This scenario could impose undue burdens, such as increased transaction costs, regulatory delay, and the potential for inconsistent results, for CMRS providers with interstate service areas. For this reason, we reserve our right to in the future to use Section 332 as an alternative basis for jurisdiction over CMRS providers faced with this type of a dilemma.

LECs have refused to pay CMRS providers for calls terminated by LECs on the CMRS networks, while other wireline carriers have received such compensation from the LECs. In other instances, LECs have required certain CMRS providers to pay for the traffic the LEC carrier originates and terminates on the systems of the CMRS provider. These problems have been compounded by certain state commissions who have limited access by CMRS providers to more reasonable interconnection rates afforded by LECs to other wireline carriers.

In this order, we have taken a variety of measures to remedy this discrimination and to ensure that CMRS providers are placed on an even footing with other telecommunications carriers when obtaining LEC interconnection. I am particularly pleased that we will allow CMRS providers with current interconnection agreements that provide for non-mutual compensation an opportunity to renegotiate those agreements under the framework of Sections 251/252, without incurring any early termination penalties. In light of the past discrimination CMRS providers have experienced, however, I would have taken two additional steps.

First, I would have extended the "fresh look" opportunity to all CMRS providers – not just those with non-mutual compensation arrangements. Our decision was to limit relief in this instance to contracts that are clearly unlawful because they violate Section 20.11 of our rules. Section 20.11, however, requires not only that CMRS-LEC interconnection agreements comply with principles of mutual compensation, but also that each carrier pay *reasonable* compensation. I believe that the record in this proceeding clearly demonstrates that the rates the LECs have charged CMRS providers have far exceeded their costs and thus could not fairly be characterized as "reasonable" compensation.

Second, instead of requiring the CMRS providers to continue paying their current interconnection rates, I would have permitted CMRS providers to immediately begin paying the default proxy rate while their interconnection arrangements were being renegotiated.

It is my hope that on a going-forward basis, CMRS providers will be able to obtain fair, reasonable and non-discriminatory interconnection rates under the terms of today's decision. For reasons of simplicity and regulatory parity, it makes sense to me to have a single regulatory scheme pursuant to Sections 251 and 252 apply as to all incumbent LEC interconnection matters. Bearing in mind Congress' concerns about the interstate nature of the CMRS industry, however, I have concerns that the state-by-state arbitration process may pose undue burdens on, or otherwise hinder the growth of, the CMRS industry. If it does, I would not hesitate to invoke our Section 332 jurisdiction if I believe that the framework we impose today is having adverse impacts on the CMRS industry.